IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 289 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

FARUKH KASAM SANDHI

Versus

STATE OF GUJARAT

Appearance:

MS SUBHADRA G PATEL for Petitioner

MR BY MANKAD APP for Respondent Nos. 1, 2 & 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 25/10/1999

ORAL JUDGEMENT

#. Heard the learned advocate Mrs. Subhadra Patel on behalf of the petitioner and learned APP Mr. B.Y. Mankad for respondent nos. 1,2 & 3. The externment order passed by respondent no.2 against the petitioner dated 21.12.98 in exercise of power conferred under section 56 of the Bombay Police Act, 1951 ("B.P.Act" for short) and confirmed by Deputy Secretary, Home Department, State of Gujarat vide order dated 9th March,

1999 in appellate proceedings under section 60 of B.P. Act are challenged in this petition under articles 226 and 227 of the Constitution of India.

#. Sub Divisional Magistrate, Morbi, District Rajkot issued a show cause notice to the petitioner dated 16th February, 1998 as to why the petitioner should not be removed out of the city and District of Rajkot as well as the contiguous areas like districts of Junagadh, Jamnagar, Amreli, Bhavnagar and Surendranagar etc. The contents of the said show cause notice could briefly be stated as under. That eight criminal cases for the offences made punishable under the Bombay Prohibition Act are registered at Paddhari Police Station which are pending for trial. That a criminal case registered at Rajkot Town Police Station for the offences made punishable under sections 302, 307, 114 of Indian Penal Code read with section 135 of B.P. Act, is also pending for trial. It is alleged in the notice that the petitioner-externee is a headstrong person and a fanatic. That he has been using force and violence, harassing people to collect money for the purpose of consuming liquor. That on account of threat and terror caused by the petitioner, the residents of Paddhari village, Memon Vas are afraid. That none of them are ready and willing to come forward to give complaint or evidence against the petitioner. Five incidents have been narrated by the witnesses before the authority on assurance of their anonymity. Incident dated 23.11.97 relates that the petitioner had beaten a rickshaw driver in a drunken condition and had threatened him to kill. Incident dated 17.12.97 relates that around 1-00 p.m. the petitioner picked up a quarrel with a person on frivolous ground as to why he was passing from that area, abused him and threatened to kill him. Incident dated 5.1.98 relates that the petitioner stopped one person in Memon Vas around 8-00 p.m. and asked him to pay money so that he could consume liquor. That in order to extract money from him, the petitioner manhandled him and looted Rs. 100/- by showing knife. The said person was also threatened not to file a complaint against the petitioner. The incident dated 11th January, 1999 relates to a loot of Rs. 200/- from a money box with a person by giving threat. The said person was also threatened not to file any complaint against the petitioner. The incident dated 14th January, 1998 relates to a loot of Rs. 100/- from a person who was passing by the vegetable market around 9-00 p.m. That the petitioner in a drunken condition abused him, manhandled him and also threatened him not to file any complaint against him.

#. On the basis of the above-stated material received and the offences registered against the petitioner, the petitioner was asked to show cause on 21.2.98 at 11.00 a.m. as to why he should not be removed from the District Rajkot and contiguous districts of Jamnagar, Junagadh, Amreli, Bhavnagar, Surendranagar etc. for a period of two years of passing the order under section 56 (a) & (b). The petitioner was also directed to furnish surety of Rs. 10,000/- for remaining present before the authority and was further directed that if the petitioner would not remain present, the proceedings shall proceed exparte. The show cause notice also disclosed the fact that on account of the fanatic nature of the petitioner and the terror caused by him in the Memon Vas of Paddhari village, residents are tired of his anti-social activity. That in order to control his anti-social activity and criminal acts for the offences made punishable under Chapters 16 and 17 of the Indian Penal Code, it has been decided to extern the petitioner for a period of two years from Rajkot District as well as the city of Rajkot and the above-stated contiguous areas.

#. It is the case of the petitioner that the petitioner appeared before the authority and filed his reply. However, no opportunity was given to the petitioner to examine the witnesses and make submissions. That on 21.12.98, respondent no.2 passed the externment order, copy of which is produced at Annexure : B. The contents of the order indicate that respondent no.2 is authorized to pass the said order. That respondent no.2 had granted opportunity to the petitioner to reply to the show cause notice dated 16.2.98 and to examine the witnesses before him. That in consideration of the evidence recorded and the allegations made against the petitioner, the authority has come to a conclusion that it is necessary to prevent the petitioner from continuing his anti-social activity. That in order to prevent the petitioner from continuing his anti-social activity, it is necessary to extern him from Paddhari town and contiguous areas of District Rajkot and the city of Rajkot as well as districts of Jamnagar, Amreli, Bhavnagar, Surendranagar, Junagadh etc. The petitioner was asked to move away from the said area within two days either by road or rail for a period of two years and not to enter into the said area without due permission of the said authority.

#. Being aggrieved by the said order, the petitioner preferred an appeal before the appellate authority, Home Department of respondent no.1 - State as provided under section 60 of B.P. Act. It appears from the order

produced at Annexure : C dated 9.3.99 that the said appeal was rejected and the order of externment was confirmed under section 60 (3) of the B.P. Act. Hence the present petition.

#. The impugned orders are challenged by the petitioner on numerous grounds. It has been submitted at the Bar on behalf of the petitioner that the impugned orders suffer from the infirmity of non application of mind as well as delayed action. It is further contended that the subjective satisfaction alleged to have been reached by the authority in passing the externment order was vitiated on account of the said non application of mind and non consideration of the material while the appellate authority without applying the mind has mechanically confirmed the order and as such, the impugned orders are required to be quashed and set aside.

#. Perusal of the contents of show cause notice as stated hereinabove discloses that the criminal activity alleged against the petitioner was restricted to the area of Paddhari town only. That there is nothing stated in the show cause notice that the petitioner has been involved in such activity in the round about area or contiguous areas like district and city of Rajkot and the districts of Surendranagar, Jamnagar, Junagadh, Amreli, Bhavnagar etc. Furthermore, the impugned order dated 21.12.98 does not indicate any material or ground from which it could be inferred that the petitioner was involved in such activity in the round about area of Paddhari town.

#. That in the matter of Nawabkhan Abbaskhan vs. M.J. Chinoy decided by this Court on 16.7.68, (Coram: P.N. Bhagwati, C.J. & Vakil, J.), it has been held by this Court that before passing an order of externment, the authority has to give an opportunity by indicating in the show cause notice about the alleged criminal activity in the round about area from which the petitioner is proposed to be removed under section 56 of the B.P. Act. In the instant case, the show cause notice disclosed the alleged criminal activity of the petitioner within the area of Paddhari town and there is nothing to indicate that the said activities were spread in the round about area much less contiguous areas like district and city of Rajkot and districts Bhavnagar, Amreli, Jamnagar, Junagadh, Surendranagar etc. Thus, the impugned order of externment clearly travelled beyond the allegations contained in the show cause notice which has disclosed non application of mind.

#. Learned APP Shri Mankad relying on the statements made by respondent no.2 in the affidavit dated 20th October, 1999 attempted to salvage the issue by submitting that the petitioner is proposed to be removed and has been removed from the contiguous area as if the petitioner is removed only from the area of Paddhari town. That in these days of modern transportation, likelihood of returning of the petitioner to Paddhari town and repeating his activity cannot be ruled out and thereby, as a precautionary measure, the petitioner is removed from the contiguous areas. This submission cannot be accepted for more than one reasons that it is an afterthought, not only that but it is illogical too.

##. It is true that the authority has power to remove a person from a contiguous area if the extent and magnitude of criminal activity of a person is spread in a wide area and there is likelihood of returning of a person and repeating the said activity. However, in order to exercise such power, the authority must indicate not only the facts but the grounds in the order itself. In the instant case, neither the show cause notice dated 16.2.98 nor the impugned externment order dated 21.12.98 indicate the fact that on account of such likelihood of returning of the petitioner, he is removed from the contiguous area. Mere explanation in an affidavit cannot be said to be sufficient and as such I am constrained to hold that so far as the finding of respondent no.1 in the impugned externment order is concerned that the petitioner is required to be removed from the contiguous areas like Rajkot city and districts of Jamnagar, Amreli, Bhavnagar, Junagadh, Jamnagar etc. to prevent his anti-social activity for a period of two years, is based on extraneous material and as such has vitiated the subjective satisfaction rendering the order invalid.

##. The other contention urged on behalf of the petitioner is also worth accepting that the impugned externment order as well as the appellate order are cursory and laconic. The orders do not indicate any evidence or facts on which the authority has based the subjective satisfaction.

In this regard, the observations made by the Full Bench in a decision of Sandhi Mamad Kala vs. State of Gujarat rendered by this Court and reported vide 1973 GLR P. 384 particularly the following observations made in para 20 are material and relevant.

20. But the question would still remain whether the externing authority can pass an

externment order without disclosing even the grounds on which the externment order is based. When we speak of grounds in this context, we mean grounds as distinguished from reasons in support of the grounds. Is it enough for the externing authority to pass an order which merely states that the proposed externee is directed to be externed from a particular area or is it necessary that he should also state the grounds on which he has given such direction? Though this question arises before us in relation to an order of externment, it is a general question which must arise in all cases where administrative orders are passed by statutory authorities. Where an administrative order is passed by a statutory authority, should the statutory authority not set out the grounds on which the order is passed. Or can it content itself by merely passing the order and refuse to tell the person affected as to why it has done so? This is a question of great importance particularly in a welfare State like ours, where necessarily large powers have to be conferred on Government and its officers for the purpose of achieving public good. No democratic society governed by rule of law can be sustained unless the action of the Government and its officers is regulated by standards or norms so that arbitrariness which is destructive of equality before the law is eliminated from State action. The Courts have always been vigilant to see that action of the Government or its officers is not arbitrary or based on improper or irrelevant grounds but is guided by standards or norms which are in conformity with the constitutional values. This the Courts have tried to do by extending the reach of their jurisdiction even to administrative decisions though, of course, on every narrow and limited grounds. It is now well-settled by several decisions of the Supreme Court of which we may mention only two, namely, Barium Chemicals Ltd. v. Company Law Board, A.I.R. 1967 S.C. 295 and Rohtas Industries Ltd. v. S.D. Agarwal, A.I.R. 1969, S.C. 707 that even where an order is made by a statutory authority which is based on its subjective satisfaction, the Court can examine the validity of the satisfaction by considering whether the statutory authority has misdirected itself in point of law or taken into account some wholly irrelevant or extraneous consideration or omitted

to take into account a relevant consideration or whether the satisfaction is based on a misconstruction of a statute or whether there was no material at all before the statutory authority on the basis of which it could have come to a satisfaction so that the satisfaction reached by it is no satisfaction at all or is otherwise colourable. Now, how is the Court going to ensure that the exercise of administrative power involving civil consequences to a person is a legitimate exercise of power not vitiated by any of these infirmities, unless the statutory authority exercising the power discloses the grounds on which the exercise of the power is based? Suppose an administrative power is exercised to the prejudice of a person on the ground that his hair is white or the colour of his skin is yellow, it would clearly be invalid because the exercise of the power would be based on irrelevant grounds having no relation to the purpose for which the power is conferred. But it would not be possible for the person affected to protect himself by challenging the exercise of the power, unless he knows what is the ground on which the power is exercised. We are, therefore, of the view that where an administrative power is exercised by a statutory authority and the exercise of such power involves civil consequences to a person, the statutory authority must disclose the grounds on which the exercise of the power is based. We must again make it clear that when we speak of grounds in this context, we mean grounds as distinguished from reasons. We may illustrate what we mean by giving an example. If a quota or license is refused to a person, it would be sufficient to state that he is not a fit person to be granted quota or license and, therefore, it has been refused. It would not be necessary to disclose in the order as to why the statutory authority thinks that he is not fit to be granted quota or license. Similarly, in case of an externment order it would be sufficient to indicate the general nature of the material allegations on which the externing authority has come to a conclusion that the case falls within a particular part of sec. 56 and preventive action under that part should be taken by it. Here, in the present case, we find that this requirement is satisfied, save in so far as the order of externment passed by the Sub-Divisional

Magistrate and confirmed by the State Government seeks to extern the petitioner from the Sub-Divisions of Gondal and Morvi."

##. Following the above-stated observations, it is necessary to examine the impugned externment order as well as the appellate order and mere perusal of the same suggests that not a single fact in respect to any allegations made in the show cause notice against the petitioner has been referred to by respondent no.2 in externment order nor it is stated as to why the explanation given by the petitioner to the show cause notice has not been accepted. Thus, the entire order appears to be mechanical. Similarly, the appellate authority has also observed that a criminal case made punishable under sections 302 and 307 of IPC is registered against the petitioner. That the information supplied by the witnesses on the assurance of anonymity supports the fact that the petitioner is involved in such anti-social activity. That on a close scrutiny, the said reasoning of the appellate authority is contrary to the material on record. It may be noted that in the show cause notice it has been stated that there are eight criminal cases registered against the petitioner for the offences made punishable under the Bombay Prohibition Act while only one case is registered in respect to the offence made punishable under sections 302, 307 & 114 of I.P.C. read with section 135 of the B.P.Act. That all the five witnesses have narrated the story of using the force and violence connected with prohibition offences. That in the absence of any other ground indicated in the order the impugned order passed by the appellate authority rejecting the appeal of the petitioner and confirming the externment order also appears to be without application of mind and as such subjective satisfaction alleged to have been reached by the authority is vitiated rendering the orders invalid.

##. As the petition succeeds on the above-stated two grounds, it is not necessary to dilate the issue by discussing and deciding the other contentions raised in the petition.

##. On the basis of the aforesaid discussion, the petition is allowed. The impugned order dated 21.12.98 passed by respondent no.2 against the petitioner as per Annexure : B and confirmed by the Deputy Secretary, Home Department - respondent no.1 - State, vide impugned order dated 9.3.99 are hereby quashed and set aside. Rule is made absolute to that extent.

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